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[ORIGINAL CIVIL JURISDICTION]

MURISON, C.J.

February 25, 1926.

## NG ENG KIAT v. GOH LAI MUI & OTHERS.

[SINGAPORE SUIT No. 697 of 1925]

*Will—Rule against perpetuities—Property situate in another jurisdiction.*

A Chinese testator died in Singapore in 1917 and his will was proved in the Colony. By one of the trusts or directions contained in his Will he directed his executors to apply 2/9th of the net proceeds of all his estate (except property in China) for the purchase of immovable property in China such property to descend to the testator's male descendants according to the law of China; and the income thereof to be applied for the worship of the testator's sinchew and those of his ancestors.

**Held,** that such a gift is not void in the Colony as infringing the rule against perpetuities.

The trust being impressed upon property situated in China and the limitations being permitted by the law of that country, the fact that such limitations would be illegal by the law of the Colony is immaterial; secus if the property were situate in the Colony.

Cases referred to:—

(1) *Choa Choon Neo v. Spottiswoode,* (1896) 1 Ky. 216.

(2) *Fordyce v. Bridges,* 2 Ph. 497 and 17 L.J. Eq. 185.

(3) *Freke v. Lord Carbery,* (1873) L.R. 16 Eq. 461.

(4) *Yeap Cheah Neo v. Ong Cheng Neo,* (1875) L.R. 6 P.C. 381.

ADJOURNED SUMMONS.

*Johannes* for Plaintiff.

*Aubrey Davies* for Defendants.

*Campbell* for Ng Eng Hoo a party having liberty to attend the proceedings.

The facts and arguments sufficiently appear from the judgment.

*Cur. Adv. Vult.*

**Murison, C.J.**—This is an adjourned summons for argument upon an issue as to the validity of certain directions contained in the will of a deceased Chinaman.

It appears that one Ng Choon Guan died in Singapore on the 3rd June 1917 and probate of his will dated 29th May 1917 was granted on the 18th June 1917 to three of the executors named therein.

By his will the testator directed his executors to realise all his estate except his property in China and after payment of his debts legacies and funeral expenses to divide the residue into nine equal shares and he gave one share thereof to each of his sons Ng Eng Kiat, Ng Eng Chee and Ng Eng Hoo and his grandsons Ng Teck Urn and Ng Lip Ngak, two shares thereof to his grandson Ng Teck Lip and as to the remaining two shares the testator directed as follows:—

> "I direct my executors to apply the remaining two shares for the purchase of immovable property in my village or elsewhere in China and the income arising therefrom shall be applied for the worship of my sinchew and those of my ancestors. And I declare that the immovable property so purchased in China shall be descended unto my male descendants according to the laws of China and my executors' duty in respect of the said two shares shall cease on the completion of the purchase of the immovable property hereinbefore mentioned."

It was ordered upon the 9th November 1925 that the issue should be adjourned for trial in Court as to whether the directions of the deceased in regard to these two shares were void or not and if so to what person or class of person the said shares should go.

It was argued by Mr. Johannes for the plaintiff in the original action (Suit No. 697 of 1925, *Ng Eng Kiat v. Goh Lai Mui and 3 others*) that the gift was bad as it infringed the rule against perpetuities. It is clear that the rule of perpetuities is part of the law of this Colony and it is clear too that this gift, if it concerned property in the Colony, would be bad as infringing that rule (*Choa Choon Neo v. Spottiswoode*[1] approved in *Yeap Cheah Neo v. Ong Cheng Neo*[4]). But these and similar cases all refer to a trust impressed upon property which is situated in England or in territory which is governed by the English law. In the present case we have a gift of money by a will for the purchase of land in China, the land to be conveyed to the male descendants of the deceased, and the income of the property to be applied by such male descendants to the ceremony of *sinchew* for the benefit of the testator. The trust is impressed upon property which is situated in China. And it appears that the law in such a case is different. In *Fordyce v. Bridges*[2] it was decided that if a testator bequeaths personal estate upon trust to invest it in the purchase of land in a foreign country, to be settled to limitations permitted by the law of that country, the fact that they are illegal by the law of England is immaterial. This

case so far as I know is good law still and it is not disputed that the limitations in question are good in China.

The converse of this case appears in the case of *Freke v. Lord Carbery*[3]. There a domiciled Irishman directed by will that all his property should be realised and applied to certain trusts which infringed the rule against perpetuities. That rule however is not in force in Ireland but part of the property consisted of a leasehold house in Belgrave Square in London. The rule of perpetuities was held to apply to the trust impressed upon the London property because it was situated in England.

In my opinion the trust under the will is good and all the executors have to do is to purchase the property in China and obtain a receipt for it from "the male descendants" of the testator according to the law of China.

The costs of all parties will come out of the estate.

*Judgment accordingly.*

*Johannes & Sammy,* Solicitors for the Plaintiff.

*A. V. L. Davies & Co.,* Solicitors for the Defendants.

*J. G. Campbell & Co.,* Solicitors for Ng Eng Hoo.

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[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J.

June 4, 1940.

## F. C. SECK TRADING AS OVERSEA STRUCTURAL COMPANY

(Appellant)

v.

## WONG AND LEE

(Respondents).

[SINGAPORE DISTRICT COURT APPEAL No. 2 of 1940]

*Money paid under mistake of law—Power of Court to relieve against mistake of law in certain circumstances.*

Money paid with a full knowledge of all the facts if paid under a mistake of law on the part of both parties cannot, generally speaking, be recovered back; but the Court has power to relieve against mistakes in law as well as against mistakes in fact if there is any equitable ground which makes it in the particular facts of the case inequitable that the party who received the money should retain it.

The Plaintiff (a building contractor) paid the Defendants (the architects for certain building works) the sum of $500/- which the Defendants demanded for a copy of certain reinforced concrete plans without which the work could not be carried out by the Plaintiff. The Defendants had no justification for demanding any such sum, the supplying of plans being covered by the architects' general fee paid by their employers.

**Held,** that as the Defendants had improperly taken advantage of the Plaintiff's ignorance, the Court would grant relief to the Plaintiff and would order the Defendants to repay the $500/- to the Plaintiff.

Cases referred to:—

(1) *Rogers v. Ingham,* 3 Ch. Div. 351 at p. 357.

(2) *Stone v. Godfrey* De G. M. & G. p. 90.

APPEAL.

*E. M. Tampoe-Phillips* for appellant (Plaintiff in the Suit).

*A. P. Raja* for Respondents (Defendants in the Suit).

The facts and arguments sufficiently appear from the judgment.

*Cur. Adv. Vult.*

**Terrell, Ag. C.J.**—On the 11th March, 1939, Haw Par Brothers entered into a contract with the plaintiff (the present appellant) to erect and complete a swimming pool, together with ancillary buildings, at Pasir Panjang. The contract, as is usual, incorporated certain conditions and specifications which were annexed thereto. The drawings and specifications were prepared by A.C. Lee, an architect, and a member of the defendant firm of Wong & Lee. Paragraph 3 of the conditions provided that a complete copy of the signed drawings and specifications should be furnished by the architect to the contractor, and that the architect should also furnish a copy of any additional drawing which in his opinion might be necessary for the execution of the work.

The specification under the heading 'drawings' amplifies para. 3 of the conditions and provides as follows:—

> "**Drawings.** The contractor shall be supplied with a copy of the passed plan and one copy of all other detailed plans necessary for the execution and completion of the work by the architect, but all extra copies shall be paid (for) by the contractor."

There is no doubt whatever that on the true construction of these provisions one copy of the plans had to be supplied free. The contractor did in fact ask for an extra copy for which he paid $5/- (see